

IN THE MARKET MISCONDUCT TRIBUNAL

IN THE MATTER OF the listed securities of China Gas Holdings Limited (Stock Code: 384),

IN THE MATTER OF Cheng Chak Ngok, Specified Person (“the **Specified Person**”)

AND

IN THE MATTER OF section 252(2) of and Schedule 9 to the Securities and Futures Ordinance, Cap. 571 (“**the Ordinance**”)

Before: Mr Kenneth Kwok SC (Chairman)

Date of the Chairman’s Decision: 7 August 2019

Date of Michael Li & Co’s letter: 7 August 2019

Date of Decision: 14 August 2019

DECISION

1. By a Decision dated 7 August 2019, the Chairman dismissed the Specified Person’s application by letter dated 26 July 2019 “for leave

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B to file and serve this witness statement on or before 30 July 2019 (and an
C extension of time for that purpose) ...” is dismissed. The Chairman also
D reserved costs.

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F *The Application*

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H 2. By letter dated 7 August 2019, Michael Li & Co asked:

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J “the Tribunal to reconsider the Decision, failing which we
K reserve all our client’s rights”.

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M 3. To start with, the Decision was made by the Chairman, not
N the Tribunal. It was a case management decision and was made by the
O Chairman. Any reasonable reader of the Decision will see that it was a
P decision of the Chairman, not the Tribunal.

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R 4. If Michael Li & Co’s application was directed at the
S Chairman, Michael Li & Co has not drawn attention to any authority for
T the Chairman to reconsider the Decision. The Chairman has discharged
U his function of considering and deciding on the Specified Person’s
V application by letter dated 26 July 2019 “for leave to file and serve this
witness statement on or before 30 July 2019 (and an extension of time for
that purpose) ...”. If the Specified Person wishes to take the matter
elsewhere, it is a matter for him. He should not vex the Chairman.

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3 5. If Michael Li & Co’s letter was directed at the Tribunal, the
4 Tribunal has not made the Decision, there is nothing for the Tribunal to
5 “reconsider”. In any event, Michael Li & Co has not cited any authority
6 on the Tribunal’s authority to reconsider the Chairman’s decision.

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6. Last but not least, the phrase “failing which we” is a threat used against one’s opponent, not the Tribunal or the Chairman. Michael Li & Co’s threat seemed somewhat uncalled for.

7. By §6 of the Decision, I quoted the well-known principle that:

“to obtain an extension of time to file further evidence, the general rule is for the applicant to satisfy the first condition that the evidence could not have been obtained with reasonable diligence by the original deadline”.

8. By §7, §8 and §9 of the Decision, I stated my judgment that both the means evidence and the remote access and operation of Microsoft Windows Computer(s) evidence could have been obtained with reasonable diligence by the original deadline. By §10 of the Decision, I concluded that the “Specified Person’s application fails and falls to be dismissed”.

9. That conclusion is fatal against the application. Assuming but without deciding that the application satisfied all other conditions for admission of further evidence, the application would still have failed, as the Specified Person failed to satisfy the first condition for admission of further evidence. It was thus unnecessary to decide on the other conditions. It is a waste of time and costs for the Specified Person to dwell on other points.

10. The Specified Person has **not** given any reason for the delay. That the “new” evidence is relevant is not sufficient. There is no reason why relevant evidence had not been submitted in time. Michael Li &

Co have been the solicitors for the Specified Person throughout. They have been under a duty to their client to submit all relevant evidence by the original deadline. There is no explanation why they have not complied with the original deadline.

11. That the new evidence is (assuming but without deciding) relevant is not by itself a reason for its admission. A party is not entitled to cause inconvenience and prejudice to others by demanding the late admission of evidence. Much of the practice of the MMT is based on that of the Courts. There is every reason for the Chairman to regard the trial dates as immovable save in the most exceptional circumstances. There are no exceptional circumstances. The trial dates should not be moved.

12. Michael Li & Co and the Specified Person have only themselves to blame for:

- (1) their unexplained failure to submit by the original deadline what they say is relevant evidence; and
- (2) their late application for leave to admit what they say is relevant evidence.

Disposition

13. The application by letter dated 7 August 2019 is dismissed. Cost reserved.

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Kenneth Kwok

(Mr Kenneth Kwok SC)
Chairman, Market Misconduct Tribunal